IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 4312/2004
(Tola Ram Vs. The Judge, Labour Court & Industrial Tribunal, Udaipur & Anr.)

Date of Order : 16/01/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Sanjeet Purohit for the petitioner.
Mr. Rameshwar Dave, Dy. Govt. Advocate for non-petitioners.

BY THE COURT:-

By the instant writ petition under Article 226 and 227 of the Constitution of India, the petitioner has impugned the Award Annex.6 dated 01.09.2001 passed by Judge, Industrial Dispute Tribunal and Labour Court, Udaipur (for short 'the Labour Court' hereinafter) and seeks a direction to reinstate him with all consequential benefits.

I have heard learned counsel for the parties.

A reference was made to the Labour Court by the State Govt. under Section 10 of the Industrial Disputes Act, 1947 (for short 'the ID Act' hereinafter) that as to whether the retrenchment of the petitioner without complying with the provisions of Section 25F of the I.D. Act is proper and valid ?, If

not, then to which relief and amount the workman will be entitled for "

It appears from the award impugned that the petitioner worked w.e.f. 19.12.1997 to 18.12.1998 as per the Log book placed on record, thereby he worked for 217 days and after adding the Sundays and Govt. holidays, the Labour Court came to the conclusion that the petitioner has completed 240 days in one calender year and therefore, his retrenchment without complying with the provisions of Section 25-F of the I.D. Act is illegal. However, the Labour Court, instead of directing reinstatement of the petitioner in service, granted compensation of Rs. 12000/- in lieu of reinstatement.

In my view, keeping in view the fact that the Labour Court did not find it proper to grant relief of reinstatement, in view of recent decision of Hon'ble Supreme Court in State of M.P. And Others Vs. Arjunlal Rajak (2006) 2 SCC 711 and a Division Bench of this Court in State of Rajasthan and Ors. Vs. Rashid Mohammad 2004 (5) WLC (Raj.) 463, the relief of reinstatement cannot be granted unless there is sanctioned post and the incumbent is appointed after following the due process of selection, and therefore, granting compensation in lieu of reinstatement cannot be said to be erroneous. However, keeping in view the facts and circumstances of the present case, a sum of Rs. 12000/- awarded as compensation by the Labour

Court in lieu of reinstatement appears to be on lower side and therefore, in the totality of facts and circumstances of the case, in my view, the compensation in lieu of reinstatement deserves to be enhanced to Rs. 25,000/-.

Accordingly, the impugned award Anenx.6 dated 01.9.2001 passed by the Labour Court is modified to the extent that the petitioner is entitled for compensation of Rs. 25,000/- instead of Rs. 12,000/- as ordered by the Labour Court.

With this modification, the writ petition stands disposed of. There shall be no order as to costs.

(H.R.PANWAR),J.

rp